

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

PATRICIA AMADIO SELITSCH

No. 03-11620

Debtor(s).

Memorandum on Objection to Homestead Exemption

This case comes before the court under very difficult circumstances. The debtor is a woman who appears to be in her fifties or sixties. She is attempting to represent herself and is clearly not competent to do so; her case would not have been commenced by a lawyer without extensive counseling and perhaps appointment of a guardian *ad litem*, but unfortunately the debtor used a petition preparer, Herb Gura. She is in jeopardy of losing her home even though there is less than \$10,000 in unsecured debt. Gura's responsibility for creating this situation is not currently before the court.

The trustee has objected to the debtor's homestead exemption. He alleges that the debtor deeded her home to her son before bankruptcy in order to thwart recovery by a creditor. He concedes that the property was deeded back to the debtor, but argues that by then it was too late.

The debtor is unable to fashion any sort of cogent response. However, pro bono counsel involved in the case for a brief period has represented that the debtor suffers from severe schizophrenia and paranoia, that she is disabled as a result, and she may have lacked the capacity to even file her petition. The debtor's observed behavior gives credence to these allegations.

1           The court begins by noting that § 522(g)(1) of the Bankruptcy Code is a statutory bar to the claim  
2 of an exemption. If concealed or voluntarily transferred property is recovered by the trustee the debtor  
3 can claim no interest in the property, even if the debtor had an equitable interest at the time of filing. *In*  
4 *re Duncan*, 329 F.3d 1195 (10<sup>th</sup> Cir. 2003). Moreover, it is not necessary that the property have entered  
5 the estate via judgment of avoidance. If the property was reconveyed to the debtor as a result of the  
6 trustee's efforts, exemption is barred by § 522(g)(1). *In re Glass*, 60 F.3d 565, 567 (9<sup>th</sup> Cir. 1995).

7           However, the transfer is not automatically deemed "voluntary" because the debtor signed a deed.  
8 A debtor's state of mind may compel a determination that a transfer was not voluntary even when a  
9 debtor affirmatively executed a conveyance. See, e.g., *In re Seidel*, 27 B.R. 347, 352  
10 (Bankr.E.D.Pa.1983), [debtors' lack of awareness of their legal rights in doing so was held to be  
11 sufficient to render their allowing a repossession of their truck to be an "involuntary" act]; *In re Taylor*,  
12 8 B.R. 578 (Bankr.E.D.Pa.1981) [payments made voluntarily by the debtor, but only in the face of threats  
13 of foreclosure by collection agency, were held not to be "voluntary transfers"]; and *In re Reaves*, 8 B.R.  
14 177 (Bankr.D.S.D.1981) [a payment made voluntarily by the debtor, but only after pressure from a bank  
15 officer, was held not to be a "voluntary transfer"]. While there are no cases directly on point, it seems  
16 reasonable to infer that a transfer made as a result of mental illness is not voluntary, nor is it voluntary  
17 where the debtor lacks the capacity to effect a valid transfer.

18           The court will accordingly sustain the objection if it finds that the debtor had the capacity to  
19 effect a valid transfer, the transfer was not the result of her mental disability, and the property was  
20 deeded back to the debtor as a result of the trustee's efforts. Pursuant to FRBP 4003(c), the trustee has  
21 the burden of proof on these issues.

22           In order to prosecute his objection, the trustee shall, within 60 days of the date of this  
23 memorandum, give the debtor 30 days' notice of an evidentiary hearing which may be set for 10:00 A.M.  
24 on any stay relief calendar. If the trustee does not notice such a hearing within said 60 days, his  
25 objection will be deemed denied.

26 Dated: February 5, 2004

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



Alan Jaroslovsky  
U.S. Bankruptcy Judge